IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12244 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARIKRISHNABHAI VANMALIDAS THAKKAR ALIAS MUNNABHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12244 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MS MITA PANCHAL Ld. AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 17/10/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed

against him by the District Magistrate, Ahmedabad city on 7.7.2003 under the exercise of powers under sec. 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as "the PBM Act" for short).

The grounds served upon the petitioner and placed on record denotes that on 13.3.2003, the Department of Director of Food and Civil Supplies, State of Gujarat, Gandhinagar found one tanker bearing No. GJ-3U-4407 parking near Bhagyodaya Hotel on Viramgam Highway, near village Eyava. On checking it was found that the said tanker was loaded with solvent like substance to the extent of 10,000/- litres. According to the explanation of driver, it was DWF oil, but the sample drawn from the substance loaded in the tanker and sent to the Forensic Science Laboratory it was found inferior quality solvent. On 13.3.2003, therefore, panchanama was drawn and seizure report was prepared. In enquiry, the statement of Kiritbhai Savajibhai Patel, Accountant of the petitioner and the driver of the tanker was recorded and from that material it was found that the tanker was carried that substance at the instance of the petitioner though according to the RTO record, the registered owner of the tanker was one Gafar Ali Umrethia and, hence, from the above material, the order impugned came to be passed against the petitioner by the District Magistrate, Ahmedabad- detaining authority.

Ld. advocate Mr. HR Prajapati for the petitioner, ld. AGP Ms. Panchal for the respondent no. 3 and ld. Addl. Central Govt. Standing Counsel Ms. Davawala for respondent no. 4 were heard. Affidavit filed on behalf of the detaining authority i.e. Deputy Secretary and affidavit filed on behalf of respondent no. 4 as placed on record were also taken into consideration.

Out of various contentions raised on behalf of the petitioner and controverted by ld. AGP and ld. Addl. Central Government Standing Counsel, it appears that this matter can be considered and decided on the sole ground whether right of the petitioner to have his representation decided at the earliest is breached. IN this respect, when we peruse para-6 of the affidavit in reply filed on behalf of the State of Gujarat by Deputy Secretary, it appears that the petitioner preferred representation dated 31.7.2003 addressed to the Secretary, PBM Advisory Board, forwarded the said representation along with their reported dated 18.8.2003 which was received by the Special Branch of Food, Civil

Supplies & Consumer Affairs Department on 19.8.2003. The file was placed before the Section Officer, who cleared the said file on same day i.e. 19.8.2003. Thereafter, the said file was moved and placed before the Deputy Secretary, who also clear up the said file on 19.8.2003. 20.8.2003, 21.8.2003 and 23.8.2003 were Government holidays and, therefore, the said file was placed before the Secretary on 23.8.2003 who cleared the said file on the same day. Again on 24.8.2003 was the Government holiday and, therefore, the said file was placed before the Hon'ble Minister of Civil Supplies on 25.8.2003 for appropriate orders. The Hon'ble Minister of Civil Supplies Department of the State Government cleared the said file on 30.8.2003. From the above factual date, there was delay in disposing of the representation of the petitioner and the said delay was not explained by the State Government, consequently, the order in question becomes bad in law.

Having heard the rival contentions and going through the facts of the case, undoubtedly, the file containing representation reached to the Hon'ble Minister of Civil Supplies Department on 25.8.2003 and was cleared by him on 30.8.2003. The facts of this case are covered by a decision of the Apex court in the matter of Rajammal vs. State of Tamil Nadu, as reported in AIR 1999 SC 684, wherein the Supreme Court observed that unexplained delay in disposing of the representation is fatal to the detention order because though no period is prescribed by Article 22 of the Constitution of India for the decision to be taken on the representation. The words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. The Apex Court in para-8, 9 and 10 of the above decision observed as under:

"8. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The Court can certainly consider whether the delay was

occasioned due to permissible reasons or unavoidable causes. This position has been well delineated by a Constitution Bench of this Court in K.M. Abdulla Kunhi and B.L. Abdul Khader vs. Union of India, (1991) 1 SCC 476: (1991 AIR SCW 362). The following observations of the Bench can profitably be extracted here (para 12 of AIR):

"It is a constitutional mandate commanding the concerned authority to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The words "as soon as may be" occurring in clause (5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and disposed of with a sense of urgency without an avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the concerned detention law, within which the representation should be dealt with. The requirement however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal."

9. The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the representation. It is not enough to say that the delay was very short. Even longer delay can as well as explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned.

10. What happened in this case was that the Government which received remarks from different authorities submitted the relevant files before the Under Secretary for processing it on the next day. The Under Secretary forwarded it to the Deputy Secretary on the next working day. Thus

there is some explanation for the delay till 9.2.1998. Thereafter the file was submitted before the Minister who received it while he was on tour. The Minister passed the order only on 14.2.1998. Though there is explanation for the delay till 9.2.1998, we are unable to find out any explanation whatsoever as for the delay which occurred thereafter. Merely stating that the Minister was on tour and hence he could pass orders only on 14.2.1998 is not a justifiable explanation, when the liberty of a citizen guaranteed under Article 21 of the Constitution is involved. Absence of the Minister at the Headquarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen."

In this view of the matter, the order impugned in this petition is required to be quashed and set aside on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 7.7.2003 by the District Magistrate, Ahmedabad under the PBM Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. VORA, J.)

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